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Court of Common Pleas

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By: MICHAEL R. SLIWINSKI 0076728

Confirmation Nbr. 2737218

STATE OF OHIO EX REL ATTORNEY GENERAL
DAVE YOST

CV 22 973217

vs.

JEFFERY ASHERBRANNER, ET AL

Judge: JENNIFER O'DONNELL

Pages Filed: 12

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO ex rel.)	
ATTORNEY GENERAL)	
DAVE YOST)	Case No:
30 E. Broad St., 14 th Floor)	
Columbus, Ohio 43215)	
)	Judge:
Plaintiff,)	
v.)	
)	
JEFFERY ASHERBRANNER)	COMPLAINT AND REQUEST FOR
34954 Stadler St.)	DECLARATORY JUDGMENT,
Beaumont, California 92223)	INJUNCTIVE RELIEF, CIVIL
)	PENALTIES, AND OTHER
and)	APPROPRIATE RELIEF
)	
MODERN SMART HOME INC.)	
c/o United States Corporation Agents, Inc.)	
411 Wolf Ledges Pkwy, Ste. 201)	
Akron, Ohio 44311)	
)	
and)	
)	
SELECT SOURCE GROUP LLC)	
c/o Jeffery Asherbranner)	
10311 Stucki Road)	
Elberta, AL 36530)	
)	
and)	
)	
THE INDEPENDENT SAVINGS PLAN)	
COMPANY)	
c/o Sean Belmudez)	
1115 Gunn Hwy, Ste. 100)	
Odessa, Florida 33556)	
)	
Defendants.)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through its counsel, Ohio Attorney General Dave Yost, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.01 *et seq.*
2. The actions and related transactions of Defendants Jeffery Asherbranner, Modern Smart Home Inc., Select Source Group LLC, and the Independent Savings Plan Company (collectively "Defendants"), hereinafter described, have occurred in Cuyahoga and other counties in the State of Ohio and, as set forth herein, are in violation of the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01, *et seq.* and the Home Solicitation Sales Act ("HSSA"), R.C. 1345.21 *et seq.*
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(C)(3) and (6), in that Cuyahoga County is the county in which Defendants conducted activity that gave rise to the claims for relief, and in which all or part of the claim for relief arose.

DEFENDANTS

5. Defendant Jeffery Asherbranner ("Asherbranner") is an individual residing at 34954 Stadler St., Beaumont, California 92223.
6. Defendant Asherbranner at all times relevant hereto, personally controlled and directed the business activities and sales conduct of Defendants Modern Smart Home Inc. ("MSH"),

and Select Source Group LLC (“SSG”), causing, personally participating in, or ratifying the acts and practices of Defendant MSH, including the conduct giving rise to the violations described herein.

7. Defendant MSH is an Alabama Corporation whose Certificate of Formation was filed and recorded with the Alabama Secretary of State on September 19, 2019. MSH was not registered with the Ohio Secretary of State to conduct business in Ohio.
8. Defendant Select Source Group (“SSG”), LLC is an Alabama Limited Liability Company whose Certificate of Formation was filed and recorded with the Alabama Secretary of State on January 29, 2020. SSG is not registered to with the Ohio Secretary of State to conduct business in Ohio.
9. Defendant The Independent Savings Plan Company (“ISPC”) is a Florida Corporation whose Articles of Incorporation were filed and recorded with the Florida Secretary of State on May 5, 1983. ISPC registered as a foreign corporation with the Ohio Secretary of State on September 16, 2005.
10. Defendants are each a “supplier” engaged the business of effecting “consumer transactions,” as those terms are defined in R.C. 1345.01(A) and (C), by soliciting consumers either directly or indirectly for home security system installation and services for a fee, and working together to finance said consumer transactions, for purposes that were primarily personal, family or household.

STATEMENT OF FACTS

11. Defendants Asherbranner, MSH, and SSG marketed and sold residential home security alarm systems and related products throughout Ohio by soliciting consumers at their homes using door to door salesmen.
12. Defendants Asherbranner, MSH, and SSG do not have a retail business establishment having a fixed permanent location in Ohio where goods are exhibited or services are offered for sale on a continuing basis.
13. Through the use of high-pressure sales tactics, the salesmen deployed by Defendants Asherbranner, MSH, and SSG represented to consumers that if they purchased home alarm systems through MSH, the consumer's existing alarm system contracts would be paid off, and a new system installed.
14. Defendants' salesmen represented that the newly installed alarm systems would be monitored for specific periods of time. The monitoring period varied from consumer to consumer.
15. Defendants encouraged consumers to finance the purchase of their equipment and services through a specific finance company, Defendant ISPC. Defendant ISPC is the only finance company used by Defendants Asherbranner, MSH, and SSG. In fact, all but one Ohio consumer used ISPC to finance their purchase.
16. Once a consumer agreed to purchase an alarm system or component thereof, Defendants initiated the loan between the consumer and Defendant ISPC to finance the purchase.

17. Once the purchase money loan was approved, Defendants Asherbranner, MSH, and/or SSG or their agents purportedly installed the system and obtained alarm monitoring for the consumer.
18. In some instances, Defendants Asherbranner, MSH, and SSG or their agents reused existing equipment already in the possession of consumers.
19. At the time of the transactions, Defendants failed to provide consumers with notices of cancellation which conformed to Ohio law and described the consumers' rights to cancel the transactions.
20. Defendant ISPC used purchase money finance agreements to finance the transactions between consumers and Defendants Asherbranner, MSH, and SSG. After an electronic purchase money agreement was signed by the consumer, Defendant ISPC typically called that consumer to confirm the precise amount financed and to provide the consumer with an exact payment amount for the duration of their loan.
21. Shortly after commencing operations in Ohio, Defendants Asherbranner, MSH, and SSG ceased doing business in Ohio and nationwide. As a result, Defendants Asherbranner, MSH, and SSG failed to continue their obligation to pay for the alarm monitoring promised in their initial agreements with consumers.
22. Despite knowing that Defendants Asherbranner, MSH, and SSG ceased operations and failed to fulfill their obligation to provide alarm monitoring services to Ohio consumers, Defendant ISPC refused to cancel the finance contracts related to these transactions.
23. In some cases, Defendant ISPC even sued Ohio consumers in Florida courts to collect on the contracts, despite the facts that the consumers were solicited at their residences in Ohio,

the contracts were allegedly signed in Ohio, and all equipment and installation services were provided in Ohio. The Ohio consumers had no contact with the State of Florida.

24. Defendant ISPC continues to collect money under the threat of litigation from Ohio consumers for Defendant MSH and Defendant SSG security systems and services that no longer function as promised.

25. Defendants have refused to refund payments made by consumers despite their requests for refunds.

PLAINTIFF'S FIRST CAUSE OF ACTION:

**VIOLATIONS OF THE CSPA BY DEFENDANTS ASCHERBRANNER, MSH,
AND SSG**

COUNT I- FAILURE TO DELIVER

26. Plaintiff incorporates the above paragraphs as if fully reiterated herein.

27. Defendants Asherbranner, MSH, and SSG committed unfair or deceptive acts or practices in violation of the Failure to Deliver Rule, O.A.C. 109:4-3-09(A) and the CSPA, R.C. 1345.02(A), by accepting money from consumers for goods and services and then permitting eight weeks to elapse without providing goods and services ordered, making a full refund, advising the consumers of the duration of an extended delay and offering to send a refund within two weeks if so requested, or furnishing similar goods or services of equal or greater value as a good faith substitute.

COUNT II – UNREGISTERED FICTITIOUS NAME

28. Plaintiff incorporates the above paragraphs as if fully reiterated herein.

29. Defendants Asherbranner, MSH, and SSG committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by engaging in consumer transactions under a

fictitious business name that is not registered with the Ohio Secretary of State as required by R.C. 1329.01(C).

30. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III – FAILING TO REMIT PAYMENT

31. Plaintiff incorporates the above paragraphs as if fully reiterated herein.
32. Defendants Asherbranner, MSH, and SSG committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), by failing to promptly remit payments on behalf of consumers to third parties for goods/services promised to those consumers who paid the supplier for those third party goods/services as a part of the overall price of the written sales contract.
33. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

**COUNT IV – FAILING TO INCLUDE FTC PRESERVATION OF CONSUMERS’
CLAIMS AND DEFENSES NOTICE IN A CONSUMER CREDIT CONTRACT
FOR THE SALE OR LEASE OF GOODS OR SERVICES TO CONSUMERS**

34. Plaintiff incorporates the above paragraphs as if fully reiterated herein.
35. Defendant Asherbranner, MSH, and SSG committed an unfair or deceptive act or practice in connection with a consumer transaction in violation of R.C. 1345.02(A), by failing to include the language required by 16 C.F.R. 433.02 regarding the preservation of consumers’ claims and defenses.

36. Specifically, 16 C.F.R. 433.2 requires that:

in connection with any sale or lease of goods or services to consumers, in or affecting commerce as 'commerce' is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for a seller, directly or indirectly, to:

- a. Take or receive a consumer credit contract which fails to contain the following provision in at least ten point, bold face, type:
NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

- b. Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan ...unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, bold face, type:
NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

37. Such act or practice has been declared an unfair or deceptive act or practice by Federal Trade Commission regulation 16 C.F.R. 433.02.

PLAINTIFF'S SECOND CAUSE OF ACTION:

**VIOLATION OF THE HSSA BY DEFENDANTS ASCHERBRANNER, MSH,
AND SSG**

FAILURE TO PROVIDE PROPER NOTICE OF THREE-DAY RIGHT OF

RESCISSION

38. Plaintiff incorporates the above paragraphs as if fully reiterated herein.

39. Defendants violated the HSSA, R.C. 1345.23 and R.C. 1345.02(A), by failing to give proper notices to consumers of their rights to cancel their transactions by a specific date.

40. The acts or practices described above have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 *et seq.* Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S THIRD CAUSE OF ACTION:

VIOLATIONS OF THE CSPA BY DEFENDANT ISPC

SUING CONSUMERS IN A DISTANT FORUM

41. Plaintiff incorporates the above paragraphs as if fully reiterated herein.

42. Defendant ISPC violated the CSPA, R.C. 1345.02(A), by suing Ohio consumers in a distant forum.

43. The act or practice described above has previously been determined by an Ohio court to violate the CSPA, R.C. 1345.01 *et seq.* Defendant committed said violations after such decision was available for public inspection pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S FOURTH CAUSE OF ACTION:
DECLARATORY JUDGMENT

44. Plaintiff incorporates the above paragraphs as if fully reiterated herein.
45. A real and justiciable controversy exists between the State of Ohio and Defendant ISPC concerning whether Defendant ISPC's contracts are enforceable against Ohio consumers.
46. R.C. 1303.35(E) states that "in a consumer transaction, if any law other than this chapter requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement, all of the following apply:
- (1) The instrument has the same effect as if the instrument included such a statement.
 - (2) The issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement.
 - (3) The extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement."
47. 16 C.F.R. 433.2 requires that consumer credit contracts contain a notice that any holder of such contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained from the proceeds of such contract.
48. The finance agreements between consumers and Defendant ISPC for the purchase of goods and services from Defendants Aherbranner, MSH, and SSG constitute consumer credit contracts pursuant to 16 C.F.R. 433.2.
49. Defendant ISPC is therefore subject to all claims and defenses that consumers could assert against Defendants Asherbranner, MSH, and SSG.

50. Pursuant to R.C. 1317.031, each consumer who entered into a purchase money loan installment note with Defendant ISPC may assert against Defendant ISPC any defense that such consumer has against Defendants MSH and SSG.

51. Based on the failure to deliver goods and/or services of Defendants Asherbranner, MSH, and SSG, Plaintiff is entitled to a declaratory judgment that the finance agreements between affected Ohio consumers and Defendant ISPC are cancelled and that prohibits Defendant ISPC from taking any action to collect on them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- A. ISSUE A DECLARATORY JUDGMENT that each act or practice complained of herein violates the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*, in the manner set forth in the Complaint.
- B. ISSUE A DECLARATORY JUDGMENT that the finance agreements between each consumer and ISPC are cancelled and prohibiting Defendant ISPC from taking any actions to collect on them.
- C. ISSUE A PERMANENT INJUNCTION enjoining the Defendants, their agents, employees, successors or assigns, and all persons acting in concert and participation with them, directly or indirectly, through any corporate device, partnership, or other association, under these or any other names, from engaging in the acts and practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 *et seq.*, its Substantive Rules, O.A.C. 109:4-3-01 *et seq.*, and the HSSA, R.C. 1345.21 *et seq.*

- D. ORDER Defendants, pursuant to R.C. 1345.07(B), to reimburse consumers found to have been damaged by the conduct of the Defendants as set forth in this Complaint.
- E. ASSESS, FINE and IMPOSE upon Defendants a civil penalty of up to \$25,000.00 for each separate and appropriate violation of the CSPA described herein pursuant to R.C. 1345.07(D).
- F. ISSUE AN INJUNCTION prohibiting Defendants from engaging in business as a Supplier in any consumer transactions in this state until such time as Defendants have satisfied all monetary obligations ordered pursuant to this litigation.
- G. GRANT Plaintiff its costs incurred in bringing this action, including, but not limited to, the costs of collecting on any judgment awarded.
- H. ORDER Defendants to pay all court costs associated with this matter.
- I. GRANT such other relief as the court deems to be just, equitable, and appropriate.

Respectfully submitted,

DAVE YOST
Attorney General

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